Supreme Court U.S.
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No. 01-1109

IN THE

Supreme Court of the United States

J. L. HOLLIS,

Petitioner,

v.

PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Provident Life and Accident Insurance Company, is wholly owned by UnumProvident Corporation.

REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether an "independent contractor" can be a "beneficiary", as defined by Section 3(8) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(8). Contrary to the assertion by Petitioner, J. L. Hollis, the Fifth Circuit's decision does not conflict with this Court's decision in *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 112 S. Ct. 1344, 117 L. Ed. 2d 581 (1992). Nor is there a split among the various Circuit Courts of Appeal on this issue. The Petitioner has glossed over the holdings of *Darden* and the other cases cited in his Petition in an effort to create an issue worthy of certiorari. The Fifth Circuit's decision was proper in all respects and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

As the Fifth Circuit observed in its opinion below, Hollis conceded in his Brief and at oral argument in the Court of Appeals that the disability insurance plan established and maintained by Graduate Supply for its employee-salesmen was an ERISA plan. *See* Pet. at 27a. Therefore, there is no question or dispute that the policies of the salesmen, who were *employees* of Graduate Supply, were preempted by ERISA. *Id.* Even though Hollis received exactly the same benefit as these other Graduate Supply salesmen, Hollis contends that his policy should be treated differently, and that he should be allowed to pursue remedies unavailable to other members of the plan, solely because he is an "independent contractor" rather than an "employee" of Graduate Supply.

The Fifth Circuit correctly rejected Hollis' argument. The Court based its decision on a plain reading of ERISA's definition of "beneficiary", as set forth in 29 U.S.C. § 1002(8). ERISA defines a "beneficiary" as "a person

designated by a participant, *or by the terms of an employee benefit plan*, who is or may become entitled to a benefit thereunder." *Id.* (emphasis added.) After analyzing Hollis' argument, the Fifth Circuit reached "the unremarkable conclusion that ERISA's definition of beneficiary means precisely what it says." Because Hollis was a person designated by the terms of the plan who could become entitled to benefits thereunder, the Fifth Circuit held that he is an ERISA "beneficiary" within the meaning of § 1002(8). *See* Pet. at 31a.

Hollis' Petition presents no basis for disturbing the Fifth Circuit's decision.

I. The Ruling Does Not Conflict With Other Circuits or This Court's Decision in *Nationwide Mut. Ins. Co. v. Darden*

The Fifth Circuit's decision does not conflict with the interpretation of § 1002(8) by other Courts of Appeal. *See Wolk v. UNUM Life Ins. Co. of America*, 186 F.3d 352, 356 (3d Cir. 1999); *Engelhardt v. Paul Revere Life Ins. Co.*, 139 F.3d 1346, 1351 (11th Cir. 1998); *Peterson v. American Life & Health Ins. Co.*, 48 F.3d 404, 409 (9th Cir. 1995); *Prudential Ins. Co. of America v. Doe*, 76 F.3d 206, 208 (8th Cir. 1996). *See* Pet. at 30a. As the Third Circuit observed in *Wolk* "all of the Courts of Appeal that have analyzed the term 'beneficiary' in a similar context have adopted this plain language interpretation." 186 F.3d at 356. The Fifth Circuit in the case *sub judice*, as well as the Third, Eighth, Ninth and Eleventh Circuits in *Wolk*, *Doe*, *Peterson and Engelhardt*, all adopted the same interpretation of the statute.

There is no authority for Hollis' argument that § 1002(8)'s definition of "beneficiary" is limited to persons who derive their benefit from a "participant". The statute

clearly contains no such limitation. Congress was careful to include a separate category for designees of a participant and a separate category for those designated by the terms of the plan. *Wolk*, 186 F.3d at 357. As the Third Circuit explained in *Wolk*,

> If Congress did not intend the phrase "by the terms of an employee benefit plan" to mean what it says, it is for Congress alone to correct. *See Connecticut Nat'l Bank v. Germanin*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

186 F.3d at 357.

In contrast to the cases relied upon by the Fifth Circuit, none of the cases relied upon by Hollis, including this Court's decision in *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 1112 S. Ct. 1344, 117 L. Ed. 2d 581 (1992), involved an issue whether the claimant was an ERISA "beneficiary" pursuant to § 1002(8). *Darden*, as well as Hollis' other cases, *Agrawal v. Paul Revere Life Ins. Co.*, 205 F.3d 297 (6th Cir. 2000); *Barnhart v. New York Life Ins. Co.*, 141 F.3d 1310 (9th Cir. 1998); *Speen v. Crown Clothing Corp.*, 102 F.3d 625 (1st Cir. 1996); and *Wolcutt v. National Mutual Ins. Co.*, 884 F.2d 245 (6th Cir. 1989), all turned on whether the claimant was an "employee" and, therefore, an ERISA plan "participant", as defined by § 1002(7). None of these cases addressed or purported to interpret the definition of "beneficiary" in § 1002(8).[1]

1. *Agrawal v. Paul Revere Ins. Co.*, 205 F.3d 297 (6th Cir. 2000); *Employee Staffing Services, Inc. v. Aubrey*, 20 F.3d 1038 (9th Cir. 1994); and *Hook v. Morrison Milling Co.*, 38 F.3d 776 (5th Cir. 1994), are cited in Hollis' Petition but were not cited or argued in the Fifth (Cont'd)

Hollis' attempt to distinguish and dismiss the cases relied upon by the Fifth Circuit (which specifically involved an interpretation of § 1002(8)) on the grounds that they involve business owners, partners or other "non-employees" (other than independent contractors) is a specious attempt to avoid holdings which are directly on point. As discussed above, the Courts of Appeal that have addressed the issue have consistently held that ERISA's definition of "beneficiary" is not limited to employees and there is no basis in either the language of the statute or the holdings of these cases for distinguishing between the types of "non-employees".

Hollis' Petition does not raise any issues worthy of certiorari. In fact, the Supreme Court has previously denied certiorari in two of the cases cited by the Fifth Circuit, which specifically involved construction of § 1002(8)'s definition of an ERISA "beneficiary", and which reached the same conclusion as the Fifth Circuit. *See Wolk v. Unum Life Ins. of America*, 528 U.S. 1076, 120 S. Ct. 792, 145 L. Ed. 2d 668 (2000) (No. 99-701); *Peterson v. American Life & Health Ins. Co.*, 516 U.S. 942, 116 S. Ct. 377, 133 L. Ed. 2d 301 (1995) (No. 94-2134).

The Fifth Circuit's decision is not, as Hollis suggest, an "evisceration of *Darden*." To the contrary, it is the proper application of ERISA's simple definition of "beneficiary". The Fifth Circuit's decision turned on an issue that was not raised in *Darden* or the other cases relied upon by Hollis. This case raises no issues warranting this Court's review.

(Cont'd)
Circuit. All of these cases are factually distinguishable from the case *sub judice*, and none of them involved an intepretation of "beneficiary," as defined by ERISA, 29 U.S.C. § 1002(8).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court to deny Hollis' Petition.

Respectfully submitted,

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